Supreme Court, U.S.
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No. 03-21

IN THE

Supreme Court of the United States

CHAUNCE WINDLE,

Petitioner,

v.

CITY OF MARION, INDIANA, a municipal corporation, CITY OF MARION, INDIANA POLICE DEPARTMENT, and ROB RAYMER, SERGEANT, in his official and individual capacity,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Seventh Circuit erred in finding no liability under due process for a "state created danger" when police officers listened for entertainment purposes to the sexual abuse of a child, took no actions to protect the child, and prevented fellow officers from assisting the child.

2. Whether the Seventh Circuit erred in finding that police officers' conduct was not deliberately indifferent and did not "shock the conscience" when the officers heard a child being emotionally and sexually abused, knew the victim's identity, and took steps to prevent fellow officers from assisting the child.

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IN THE

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CHAUNCE WINDLE,

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CITY OF MARION, INDIANA, a municipal corporation, CITY OF MARION, INDIANA POLICE DEPARTMENT, and ROB RAYMER, SERGEANT, in his official and individual capacity,

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PETITION FOR A WRIT OF CERTIORARI

Chaunce Windle respectfully requests that this Court issue a Writ of Certiorari to review the judgment entered in this case by the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The decision of the Seventh Circuit denying the Petition for Rehearing is reported at No. 02-2363, 2003 U.S. App. LEXIS 6338 (7th Cir. April 1, 2003) and is reproduced in App. A. The Opinion of the Seventh Circuit is reported at 321 F.3d 658 (7th Cir. 2003) and is reproduced in App. B.

The Judgment in a Civil Case of the United States District Court for the Northern District of Indiana is reproduced in App. C. The Memorandum Opinion and Order of the United States District Court for the Northern District of Indiana is reported at 196 F.Supp.2d 750 (N.D. Ind. 2002) and is reproduced in App. D.

JURISDICTION

The Opinion of the United States Court of Appeals for the Seventh Circuit was issued on March 3, 2003. A timely Petition for Rehearing was denied by that Court on April 1, 2003. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED IN THE CASE

42 U.S.C. § 1983. Civil action for deprivation of rights

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

In the fall of 1997, officers from the City of Marion Police Department began to intercept cell phone conversations via

their police scanners. The police officers listened to conversations that were sexually and emotionally abusive in nature and involved an adult female, Carol Rigsbee (hereinafter designated as "Rigsbee"), and a minor female child, Chaunce Windle (hereinafter designated as "Chaunce"). Police officers admitted to listening to the conversations when things were "slow" on the job, and they described the activity between the adult female and minor child with the unusual name as "sick." The officers continued to listen to the conversations after they knew the identity of the adult and the child. In fact, by telling a superior that he had already reported the abuse when he had not, Sergeant Rob Raymer (hereinafter designated as "Raymer") took steps to prevent fellow officers from intervening on behalf of the child. Lieutenant Alter-Dunn dissuaded a subordinate from intervening by telling him there was nothing they could do because they had obtained the information by illegal intercept. Her words were viewed as a directive not to intervene.

Chaunce, the minor child victim, filed her Complaint on December 15, 2000, alleging that the Defendants violated her rights under 42 U.S.C. § 1983 and under the Fourteenth Amendment of the United States Constitution because their act of increasing her vulnerability to her abuser merely for their own entertainment purposes when they knew Chaunce's identity and the identity of her abuser rose to the level of outrageous and conscience shocking. Further, Chaunce alleged in her Complaint that the City of Marion maintained a policy of not training its officers to investigate child abuse that led to the violation of her constitutional rights. As a result of the Defendants' actions, Chaunce suffered physical and emotional injury. Chaunce's therapist, Ann Presnall, described her as "desperate" and stated that it was inappropriate to allow her continued exposure to her abuser. In addition to the physical harm the Defendants' actions allowed Rigsbee to inflict upon Chaunce, Ms. Presnall noted that the emotional manipulation was very destructive to Chaunce. Chaunce

testified that she felt trapped and brainwashed and that each time she was molested her emotional state worsened. Chaunce stated that had the Defendants acted thirty (30) days sooner it would have spared her a month of pain.

On January 6, 2002, Defendants filed a Motion for Summary Judgment. Chaunce filed her Memorandum in Opposition to Defendants', City of Marion, Indiana and Sergeant Rob Raymer, Motion for Summary Judgment on March 1, 2002. The United States District Court for Northern District of Indiana entered its Judgment and Memorandum of Decision and Order on April 25, 2002, granting the Defendants' Motion for Summary Judgment. In finding no genuine issue of material fact, the District Court held that the Defendants neither created a foreseeable danger nor placed Chaunce in a dangerous position that was foreseeable. App. D, pg. 22a, Memorandum of Decision and Order. Thus, the District Court found no underlying constitutional violation of Chaunce's substantive due process rights. On May 31, 2002, Chaunce filed her Notice of Appeal. The Seventh Circuit Court of Appeals filed its Final Judgment for Defendants and against Chaunce on March 3, 2003. Chaunce filed a timely Petition for Rehearing on March 14, 2003. The Seventh Circuit entered its order denying Chaunce's Petition for Rehearing on April 1, 2003. App. A, pg. 1a.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE A CONFLICT AMONG THE CIRCUITS CONCERNING WHEN THE GOVERNMENT MAY BE HELD LIABLE FOR A "STATE CREATED DANGER."

The United States Supreme Court has held that the government's failure to protect a citizen does not rise to the level of constitutional violation in a 42 U.S.C. § 1983 action. *DeShaney v. Winnebago County Dept. of Soc. Serv.*, 489 U.S.

189 (1989). However, in the same Opinion the Supreme Court found, "While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them." *Id.* at 201. With this sentence, this Court established what appellate courts have deemed the "State-Created Danger Theory." It is against this backdrop that Chaunce brought her § 1983 suit.

The circuit courts agree that the theory is a valid claim upon which plaintiffs may state a claim in § 1983 actions. The difficulty arises, however, in the test the district and circuit courts utilize to determine whether the government is liable under the State-Created Danger Theory. The circuits are split in the manner in which they make this outcome-determinative decision.

The Seventh Circuit has defined the State-Created Danger test by holding:

> *Monfils*, along with our other cases dealing with this issue, suggest that the key question in determining whether state behavior violated the victim's constitutional right is: "What actions did [the state actor] affirmatively take, and what dangers would [the victim] otherwise have faced?"

Windle v. City of Marion, 321 F.3d 658, 661 (7th Cir. 2003) (quoting *Monfils v. Taylor*, 165 F.3d 511, 517 (7th Cir. 1998), *rehearing denied*, *Windle v. City of Marion,* No. 02-2363, 2003 U.S. LEXIS 6338 (7th Cir. April 1, 2003).

Under the Seventh Circuit test applied in Chaunce's case, the Court first considered the actions the state actor, the City of Marion Police Department and individual officers, affirmatively took. The Seventh Circuit refused to consider the Defendants' affirmative acts of dissuading fellow officers from intervening because the Seventh Circuit viewed these arguments as waived. *Id.* at 662, footnote 3. However, the

Court did acknowledge Chaunce's arguments that the Defendants took specific, affirmative actions that prevented fellow officers from assisting her. *Id.* The Court deemed Chaunce's argument waived in spite of the fact that she had made the argument in her Plaintiff's Memorandum in Opposition to Defendants', City of Marion, Indiana and Sergeant Rob Raymer, Motion for Summary Judgment, in her brief of the Appellant, in her Reply Brief, and in her rebuttal at oral argument before the Seventh Circuit. *Id.* Chaunce's Petition for Rehearing focused on her argument that she had not waived the issue of the Defendants' affirmative actions of preventing fellow officers from intervening on her behalf.

The second prong of the Seventh Circuit test for liability under the State-Created Danger Theory entails consideration of what dangers the victim would have faced had the state not acted. The record indicates that had officers not been dissuaded from assisting Chaunce, the abuse would have stopped much sooner than it did, and the harm to the child would not have been as severe. Ann Presnall, Chaunce's therapist, testified that continued exposure to her abuser increased the harm to Chaunce. The Seventh Circuit's overly restrictive analysis of the State-Created Danger Theory, under the facts of this case, has left Chaunce without justice.

The Third Circuit has defined the test for a State-Created Danger claim under § 1983 by considering whether:

> (1) the harm ultimately caused was foreseeable and fairly direct; (2) the state actor acted in willful disregard for the safety of the plaintiff; (3) there existed some relationship between the state and the plaintiff; and (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.

Estate of Smith v. Marasco et al., 318 F.3d 497, 506 (3rd Cir. 2003). *See also Schieber v. City of Philadelphia*, 320 F.3d

409, 417 (3rd Cir. 2003)(test for successful claim under State-Created Danger Theory).

The Third Circuit test differs from the Seventh Circuit approach in several ways. The Third Circuit considers whether the harm was foreseeable and fairly direct. The Seventh Circuit did not consider whether the harm was foreseeable despite the evidence Chaunce provided to prove the Defendants were aware that abuse is harmful to children. The Seventh Circuit also did not consider the second prong of the Third Circuit's test, whether the Defendants acted in willful disregard for the safety of the plaintiff. In this case, the Defendants admitted that they were being entertained by the intercepted phone conversations. Allowing the abuse to continue and taking steps to prevent intervention on the child's behalf displays a willful disregard for the safety of Chaunce. The third prong of the Third Circuit test requires that there be some relationship between the state and the plaintiff. The Seventh Circuit test does not include this prong. This prong of the Third Circuit test, however, seems to overlook non-custodial situations where the state has created or enhanced a plaintiff's danger. The Seventh Circuit also did not consider the fourth prong of the Third Circuit test, whether the state actors used their authority to create an opportunity for the third person's crime to occur that otherwise would not have existed. Had the Seventh Circuit considered this factor, it would have determined from the record that had the Defendants not affirmatively acted to prevent others from assisting Chaunce, Rigsbee would not have inflicted the additional multiple harmful molestations on Chaunce.

The Fifth Circuit applies a two part test to determine whether a plaintiff has stated a claim: ". . . (1) the state actors created or increased the danger to the plaintiff and (2) the state actors acted with deliberate indifference." *Morin v. Moore, et al.*, 309 F.3d 316, 322 (5th Cir. 2002). Relative to "deliberate indifference," the United States Supreme Court

has held, "As our decision in *Canton* makes clear, 'deliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Bd. of the County Comm'rs v. Brown*, 520 U.S. 397, 410 (1997).

The Fifth Circuit test differs from the Seventh Circuit test in that the Seventh Circuit does not consider whether the state actors acted with deliberate indifference. The Seventh Circuit test does not consider evidence in the record that reveals Defendants disregarded the fact that they knew the consequences of abuse are harmful to children. Chaunce would have prevailed under the Fifth Circuit test because the Defendants' actions increased the harm to Chaunce, and they acted in disregard of a known and obvious consequence—further molestations of the child. Such actions, according to this Court, constitute deliberate indifference. *Id.* The record is replete with facts that the Defendants increased Chaunce's harm by allowing continued exposure to her abuser for their own entertainment when the Defendants knew that continued exposure to a molester would be harmful to an abuse victim.

In the Sixth Circuit, a plaintiff must be successful in establishing the elements of a two-part test in order to state a claim under the State-Created Danger Theory:

> In *Sargi*, this Court stated: "Liability under the state-created danger theory must be 'predicated upon the states' affirmative acts which work to plaintiffs' detriments in terms of exposure to danger." 70 F.3d at 913 (quoting *D.R. v. Middle Bucks Area Vocational Technical Sch.*, 972 F.2d 1364, 1374 (3rd Cir. 1992)). This Court in *Kallstrom* also required the plaintiff to prove that she faced a special danger from the affirmative actions of the state:
>
> > However, because many state activities have the potential to increase an individual's risk of harm, we require plaintiffs alleging a constitutional tort under

> § 1983 to show "special danger" in the absence of a special relationship between the state and either the victim or the private tortfeasor. The victim faces "special danger" where the state's actions place the victim specifically at risk, as distinguished from a risk that affects the public at large.
>
> 136 F.3d at 1066.

Jones v. Union County, 296 F.3d 417, 430 (6th Cir. 2002)(quoting *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1066 (6th Cir. 1998).

While the Sixth Circuit test considers the state's affirmative actions that increase harm to the plaintiff, unlike the Seventh Circuit, the Sixth Circuit also requires that the state's actions place a victim specifically at risk rather than a risk that might affect the public at large. Had the Seventh Circuit considered that element, the record would have revealed that the Defendants' actions of dissuading fellow officers from assisting Chaunce increased her harm and placed her specifically at risk rather than placing children in the public at large at risk.

Yet another test is applied in the Tenth Circuit:

> To make out a proper danger creation claim, a plaintiff must demonstrate that (1) the charged state entity and the charged individual actors created the danger or increased plaintiff's vulnerability to the danger in some way; (2) plaintiff was a member of a limited and specifically definable group; (3) defendants' conduct put plaintiff at substantial risk of serious, immediate, and proximate harm; (4) the risk was obvious or known; (5) defendants acted recklessly in conscious disregard of that risk; and (6) such conduct, when viewed in total, is conscience shocking.

Currier v. Doran, 242 F.3d 905, 918 (10th Cir. 2001), *cert. denied*, 534 U.S. 1019 (2001).

The comprehensive test utilized by the Tenth Circuit is significantly different from the test applied in the Seventh Circuit. The Tenth Circuit test appears to combine elements of many of the tests applied in other circuits and considers more circumstances surrounding a plaintiff's claim. The standard for liability under the State-Created Danger Theory applied by the Seventh Circuit excludes consideration of many of the circumstances surrounding a claim.

Applying the test utilized by the Tenth Circuit in *Currier*, Chaunce met each element. Under the first element, that the charged entity and individual actors create the danger or increase plaintiff's vulnerability to the danger in some way, the Defendants took affirmative actions that prevented Chaunce's removal from the clutches of her abuser. The Seventh Circuit found, as a matter of law, that Defendants' actions did not make Chaunce's situation worse despite acknowledging Chaunce's arguments that certain of the Defendants responded to Chaunce's plight with specific, affirmative actions that prevented fellow officers from assisting the child. *Windle*, 321 F.3d at 662, footnote 3. The Defendants' actions that increased the harm to Chaunce included listening to the abuse for entertainment rather than stopping the harm. Despite finding that the Defendants did not increase the harm to Chaunce, the Seventh Circuit noted, "Only when Raymer intercepted a phone conversation on November 24, 1997, that led him to believe that Chaunce was in danger of doing something drastic and was possibly suicidal did he decide to act." *Id.* at 660. The Court's statement reveals the Defendants' acknowledgement of the increased harm to Chaunce. They allowed the harm to escalate until Chaunce was desperate enough to do something drastic. Only then, did the Defendants choose a child's safety over their misguided and perverted entertainment.

With regard to the second prong of *Currier*, that the plaintiff be a member of a limited and specifically definable

group, Chaunce was a member of such a group. She was a minor child with an unusual name in the community, and the Defendants knew her identity. This was not a situation where the risk of harm was increased to some unknown and innumerable group of children such as all students at the middle school where the abuser worked. Rather, the harm was increased by the actions of the Defendants to a specific and known child.

Defendants fall within the third prong of the test because their behavior put Chaunce at risk of serious, immediate, and proximate harm. There can be no doubt that exposure to a molester is harmful to a child. Chaunce provided both the United States District Court for the Northern District of Indiana and the Seventh Circuit with evidence from her therapist, Ms. Presnall, that she had been harmed by continued and repeated exposure to her abuser. As well, she provided the Court with evidence that the Defendants were aware that exposure to an abuser was harmful to a child. Despite this evidence, neither the District Court, nor the Seventh Circuit acknowledged Ms. Presnall's testimony underscoring the danger to Chaunce that was enhanced by the Defendants' actions.

The fourth prong of the analysis requires that the risk be obvious or known. The police listened to the abuse, received reports of said abuse, and had investigated molestations in the City in the past. Raymer knew something "sick" was going on. The risk of harm that the Defendants' actions placed Chaunce in was known and obvious. In fact, the police chose to sacrifice their entertainment to help the child only when they had allowed the harm to escalate to a point where Chaunce spoke of suicide or of running away.

The fifth prong of the *Currier* analysis requires that the Defendant act in a reckless manner with conscious disregard of the risk. This prong of the test is also met by the Defendants' lack of immediate intervention and failure to

follow a clearly established state statute, demonstrating their reckless and conscious disregard of the increased vulnerability that Chaunce faced.

Finally, the sixth prong of the *Currier* test requires that the conduct of the Defendants, when viewed in total, be conscience shocking. The actions of the Defendants, when viewed in their totality, should have shocked the conscience of the Seventh Circuit Court of Appeals. The record reveals that the police listened to cell phone conversations when they were bored on third shift. The Seventh Circuit noted this evidence by finding, "A possible implication from the record and from Chaunce's allegations is that the officers continued to listen to the conversations for the sake of personal entertainment." *Id.* The Defendants knew the identity of the child victim of sexual molestation well before they intervened. Further, Raymer took steps that discouraged others from intervening on Chaunce's behalf. Chaunce has satisfied each prong of the Tenth Circuit *Currier* holding.

Despite these facts, under the Seventh Circuit analysis of a State-Created Danger claim, Chaunce is left a victim without justice. The current state of the law in the Seventh Circuit is such that a police officer, whose car bears the phrase "To Protect and Serve," may listen for entertainment purposes to the direct abuse of a child, know the child's identity, know the perpetrator's identity, take steps to prevent fellow officers from intervening on behalf of the child and not be held accountable for those actions. This outcome cannot be what this Court intended under its decision in *DeShaney*.

While the United States Supreme Court acknowledged the State-Created Danger exception to the holding in *DeShaney*, the Court has yet to provide guidance to lower courts regarding interpretation and application of the exception. Because the issue of whether the state created the danger a plaintiff faced is out-come determinative in deciding whether a constitutional violation occurred under the *DeShaney* exception,

the parameters of the test a circuit court of appeals applies will literally determine whether a plaintiff "gets her day in court." Some circuits apply only a two-pronged test, while other circuits consider more of the surrounding circumstances in evaluating the government's liability under the State-Created Danger Theory.

The end result of the various tests applied in the circuit courts is that a plaintiff's justice is dependent upon the circuit in which her claim is filed. Had Chaunce's suit been filed in the Tenth Circuit, where the test includes consideration of more of the surrounding circumstances, Chaunce would have had her day in court. Had Chaunce been fortunate enough to reside in the Sixth Circuit, she would have prevailed on her claim. The varying tests utilized by the Circuits to determine whether the State created the danger a plaintiff encounters leads to an environment where justice is predicated not upon a consistent application of the law, but is determined by circuit boundaries.

The issue of when the government is liable for State-Created Danger arises in a large number of § 1983 cases. Both plaintiffs and defendants would benefit by clarification of the issue. Thus, it is imperative that the United States Supreme Court provide the circuit courts of appeal with clarification of this important issue of federal law.

II. THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE COURT OF APPEALS ERRED IN DENYING LIABILITY FOR CONDUCT BY GOVERNMENT OFFICERS THAT WAS DELIBERATELY INDIFFERENT AND CONSCIENCE-SHOCKING.

The United States Supreme Court has held: "Thus, in a due process challenge to executive action, the threshold question is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to

shock the contemporary conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998). Here, and contrary to the law of the United States Supreme Court, the Seventh Circuit did not consider the "threshold question."

A. The Marion Police Department, its officers and the City of Marion all displayed deliberate indifference to Chaunce's plight.

The United States Supreme Court addressed the theory of deliberate indifference in its Opinion in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998). There, the Court held that the deliberate indifference standard is applicable only where actual deliberation is practical. *Id.* at 851.

Chaunce argued in her Plaintiff's Memorandum in Opposition to Defendants', City of Marion, Indiana and Sergeant Rob Raymer, Motion for Summary Judgment, in her Brief of the Appellant, and in her Reply Brief that the Defendants acted with deliberate indifference to her plight. The record reveals that the officers listened to the sexual and emotional abuse of Chaunce over their police scanners for entertainment purposes when things were slow on third shift. The Seventh Circuit acknowledged this evidence in the record by finding, "A possible implication from the record and from Chaunce's allegations is that the officers continued to listen to the conversations for the sake of personal entertainment." *Windle*, 321 F.3d at 660.

Further, evidence of deliberate indifference on the part of the Defendants occurred when they did nothing to assist the child even though they knew her name and the name of the perpetrator. The Seventh Circuit noted the ease with which the Defendants could have prevented harm to Chaunce by finding:

> At some point, the officers, including Raymer, became aware of the fact that the younger female's first name was Chaunce.

> One might anticipate that a police officer armed with this information would have aggressively investigated and intervened in an attempt to protect the well-being of the minor female. Indeed, the uncommonness of the name Chaunce and the fact that some of the officers in the department knew her father and were aware of the existence of a Chaunce Windle, it appears this case would not have required a great deal of further investigative effort. Nevertheless, Raymer took no intervening action for about two months.

Id.

The Seventh Circuit's acknowledgment that Raymer did not take action to assist Chaunce for two months reveals the time that the Defendants had for deliberation in the matter. The record specifically reveals instances where the Defendants did, in fact, deliberate the matter. When Officer Henderson approached his superiors about the situation, Lieutenant Alter-Dunn told him there was nothing the department could do because the calls were illegally intercepted. The situation was discussed at roll call. Perhaps most revealing of the deliberation of the Defendants about the situation was that Raymer told Lieutenant Alter-Dunn that he had reported the case to the Prosecutor, when he had not. The Defendants had time to deliberate the situation yet chose to leave Chaunce in the clutches of her abuser, thus increasing her danger while reacting with indifference.

Chaunce further argued that the Defendants displayed deliberate indifference to her plight by failing to train the City of Marion police officers regarding their obligations under Indiana statute to report child abuse. The policymakers of the City of Marion Police Department recognized that it was foreseeable that children in Marion would be abused; yet, the City and the Police Department did nothing to train its officers to respond to such situations.

B. The actions of the Marion Police Department, its officers and the City of Marion rise to the level of conscience-shocking.

In addressing the idea of "conscience-shocking," the *Lewis* Court held:

> It is, on the contrary, behavior at the other end of the culpability spectrum that would most probably support a substantive due process claim; conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level.

Lewis, 523 U.S. at 849 (internal citation omitted).

Regarding the violation of Chaunce's Fourteenth Amendment Due Process rights, the Seventh Circuit ruled, "As regrettable as the delayed reaction of Sergeant Raymer and the Marion Police Department may have been, it did not violate any constitutional rights of Chaunce Windle." *Windle*, 321 F.3d at 663. Based upon the Seventh Circuit's own findings and the facts in evidence in the record, the Seventh Circuit's holding that there was no constitutional violation is contrary to the law of the United States Supreme Court. The Seventh Circuit did not address the "threshold question" spelled out in *Lewis*, 523 U.S. at 847, that being whether the Defendants' behavior is so egregious and outrageous that it shocks the conscience.

The Seventh Circuit did not consider whether the Defendants' behavior of listening to child abuse for entertainment purposes while knowing the identity of the child and the perpetrator and taking steps to prevent fellow officers from assisting the child was so outrageous as to shock the conscience given the time available for deliberation. Had the Seventh Circuit followed the law of the United States Supreme Court as spelled out in *Lewis*, an underlying constitutional violation would have been found.

In *Lewis* the Supreme Court held that under certain circumstances, deliberate indifference may rise to the level of conscience-shocking. *Id.* at 849. Significantly, the *Lewis* Court held: "When such extended opportunities to do better are teamed with protracted failure even to care, indifference is truly shocking." *Id.* at 853. Certainly, the Defendants had ample opportunity to "do better" by Chaunce.

Sadly, those who purport to "protect and serve" failed to care about a child's sexual and emotional abuse. The deliberately indifferent and conscience-shocking actions of the Defendants enhanced and escalated the danger Chaunce faced. In the words of the Seventh Circuit, "A State serves a compelling interest in protecting abused children." *Pesce v. J.-Sterling Morton High School, District 201, Cook County, IL, et al.*, 830 F.2d 789, 798 (7th Cir. 1987). That compelling State interest was not served by the actions of the Defendants or by the Seventh Circuit Opinion in *Windle*.

CONCLUSION

THEREFORE, Petitioner, Chaunce Windle, by counsel, respectfully requests that the Court grant her Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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